

IN RE:
ESTATE OF ROBERT H.
SCHUMACHER, SR., Deceased
Date of Death: June 21, 2014

IN THE COURT OF COMMON
PLEAS FOR THE 26TH JUDICIAL
DISTRICT, COLUMBIA COUNTY
BRANCH, PENNSYLVANIA
ORPHANS' COURT DIVISION

Reg. of Wills #19-14-0249

CASE NO: 165 OC 2014

APPEARANCES:

GREGORY A. STUCK, ESQUIRE, Attorney for Petitioners Ralph Schumacher and Kathleen L. Schumacher
MARIANNE E. KREISHER, ESQUIRE, Respondent/Executrix of the Estate of Robert H. Schumacher, Sr.

January 7, 2015. JAMES, J.

OPINION

History of Matter

FILED
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CLERK OF COURTS OFFICE
COLUMBIA COUNTY, PA

This case is a will contest. Robert H. Schumacher, Sr. ("Testator") died on June 21, 2014. A will dated November 18, 2010, was probated on September 4, 2014. Per the will, Marianne E. Kreisher, Esquire ("Executrix" and "Respondent") was appointed executrix of the estate. On October 27, 2014, "Petitioners" Ralph E. Schumacher (son of the testator) and Kathleen L, Schumacher (Ralph's spouse) filed Petitioner's (sic) Petition for Admission of After-Discovered Will into Probate Pursuant to 20 Pa.C.S.A. §3138.¹ Petitioners sought to probate a

¹ "If a later will or codicil is submitted to the register for probate within three months of the testator's death but after the register shall have probated an earlier instrument, the register, after such notice as he deems advisable, but with at least ten-days' notice to the petitioner who presented

later will dated February 23, 2013, which named them as co-executors.

A hearing was held January 5, 2015. The issues were whether the testator had testamentary capacity at the time of the signing of the February 23, 2013, will, and/or whether the testator was subject to undue influence. Each party presented numerous witness and several exhibits.

Findings of Fact

The court finds the following facts have been proven:

1. Robert H. Schumacher, Sr. ("Testator") died on June 21, 2014. A properly executed will dated November 18, 2010, was probated on September 4, 2014. Per the will, Marianne E. Kreisher, Esquire, ("Executrix") was appointed executrix of the estate. Testator's wife had died in 2010. Testator was survived by two sons, Ralph Schumacher and Robert Schumacher, Jr. ("Bobby").
2. The November 18, 2010, will bequeathed the entire estate to Bobby via a simultaneously executed Special Needs Trust. Bobby has had disabilities his entire life, including cerebral palsy and a mild intellectual disability. Bobby receives SSI.

the probated instrument if he has not requested probate of the later will or codicil, shall have power to open the probate record, receive proof of the later instrument or instruments and amend his probate record." 20 Pa.C.S.A. §3138. Although this provision would render petitioners' request untimely, petitioners appealed the probate timely under 20 Pa.C.S.A. §908.

3. The estate consisted of an old farmhouse on fourteen acres, a sewage treatment plant that services a residential area developed by testator, a few cars, tools, equipment, coins, furniture and personal property and little cash savings.
4. The will and trust named Marianne Kreisher, Esquire, as executrix and trustee. Testator had no friends or family members with whom he had a close trusting relationship. He had been a client of the Kreisher Law Firm for almost thirty (30) years and trusted them.
5. Testator wanted to care for Bobby through this estate plan.
6. Testator had had a strained relationship with his son Ralph over the years.
7. Around the time of testator's wife's death in 2010, decedent began to show signs of dementia, characterized by symptoms of poor memory, poor judgment, and confusion.
8. In 2011, testator continued to be treated by his family doctor who prescribed medicine to slow the progression of dementia, although it continued to get worse, characterized by cognitive impairment, bad judgment, and impaired memory. Prior to 2012, the doctor advised petitioners of the dementia. Petitioners often accompanied testator to his appointments. Per the doctor, in January 2013 when he saw testator, testator had moderate dementia and delirium from an infection. He could not do his activities of daily

living at that time. Testator was living at home at that time with Bobby. Testator was malnourished and was hospitalized for a short period. Before that time, the doctor had involved the Area Agency on the Aging to help testator. At that point he could not operate the sewer plant he owned.

9. The doctor examined testator again in April 2013. The delirium had cleared up but his cognitive impairments had not improved, nor would they. However, the doctor stated equivocally that testator generally knew what he owned and who his heirs were, although during this time, testator sometimes did not know he was at the doctor's office.
10. The doctor opined that on February 23, 2013, testator would not have been able to understand the will and trust that he signed that day.
11. In 2011, male petitioner found that the November 18, 2010, will excluded him. In 2011, male petitioner took testator to another law office in Sunbury to rewrite the will. The attorney met twice with testator and male petitioner. Male petitioner presented the attorney with an outline of what his father wanted done in a new will. When the attorney talked to testator alone, testator told the attorney that he did not want to change the will and

wanted Bobby taken care of like he had planned. The will and trust were not changed.

12. As testator's dementia progressed, male petitioner became more involved with helping his father. He stayed at the farmhouse several times a week over the last two to three years before his father's death and visited the farm almost daily. He helped maintain the sewer plant.
13. In 2004, testator proposed selling a house for a bargain price to petitioners. They refused it. However, in 2010, testator and his wife gifted the house to petitioners. They use it as their primary residence.
14. In 2002, testator had written a will naming his sons Bobby and Ron (who later died) as beneficiaries. He left male petitioner out of that will.
15. Testator was a hard worker and smart and demanding businessman who developed his farm into a very nice residential area with a private sewage treatment plant which he operated with the help of a licensed operator.
16. In 2011, testator began to have significant problems with the treatment plant. Male petitioner would accompany his father to township meetings and got increasingly involved in the maintenance and operation of the plant. In 2011, testator had to reply to several complaints from the township about non-payment of bills and the general faulty

operation of the plant. As time went on, male petitioner attended more township meetings and testator attended fewer and fewer. The township suggested he get someone else on his bank account to help pay bills. At first he refused, but eventually in January 2012, he put male petitioner on the account.

17. The sewer plant became more problematic as time went on. Testator's longtime operator was concerned about testator's abilities to maintain the plant as early as at least 2012. The operator eventually quit in the spring of 2013 because the plant was not being maintained properly.

18. The DEP representative had dealt with testator on sewage plant issues for several years. They always resolved the issues to their mutual satisfaction. In early 2013, the representative noticed a change in testator's responses. They became more and more contentious until in 2014, the plant was put into receivership and turned over to the township to run.

19. The irresponsible operation of the treatment plant from at least 2011 until the time of his death was extremely uncharacteristic of testator.

20. After 2011, testator was uncharacteristically easily influenced to do what others wanted him to do.

21. After 2012, testator would still express his opinions on various topics, but unlike before that time, he would have no factual basis for those opinions.
22. During 2011 and up through 2012, testator started to often call the local police about odd matters, e.g., missing personal papers repeatedly. He often accused male petitioner.
23. Testator was a private independent person. For some reason in 2012, a third person (Mr. Drew -a Megan's Law registrant) moved into testator's house with Bobby and testator. Mr. Drew was arrested on February 26, 2013, for stealing testator's guns, jewelry, and coins in 2012.
24. Mr. Drew and two of his relatives were named as beneficiaries in testator's February 23, 2013, will.
25. Several churches were named as possible beneficiaries in the new will. Testator had no church connections. Male petitioner did.
26. On February 23, 2013, testator signed a new will. This will and special needs trust were written by male petitioner. Ralph and Kathleen, both petitioners, were put into the will. They received the farmhouse and land subject to Bobby's right to live there with them. They also received two-thirds of the stock of the treatment plant corporation.

27. In the new will, there were very few assets to fund a special needs trust for Bobby - essentially only a one-third interest in the treatment plant corporation stock -if Bobby's one-third share can be sold.
28. When the will was signed on February 23, 2013, testator gathered with petitioners and six witnesses and a notary at the farmhouse. During the signing ceremony, all the witnesses and the notary listened as male petitioner read the will and trust to his father who signed each page upon hearing it read.
29. The witnesses to the will were petitioner's friends who barely knew testator. They did not know about his dementia, nor did they know much about his pre-dementia personality. Although they were mainly credible, they could not provide information or insight into testator's testamentary capacity or whether he was subject to undue influence or not. They simply heard the will and trust read and saw testator sign.
30. The February 2013 will had several provisions which were difficult for a trained lawyer to understand and some provisions that were incomprehensible, e.g., paragraph 21.
31. From 2010 until the time of testator's death, male petitioner was testator's main spokesperson and helper for the family business. He went to meetings for him, wrote

letters for him, and negotiated for him. His name was on a bank account with testator. He was at testator's house almost every day.

32. On February 23, 2013, testator did not know the natural objects of his bounty as evidenced by his inclusion in the will of people he did not know, one of whom was stealing from him.

33. On February 23, 2013, testator suffered from a weakened intellect.

34. On February 23, 2013, testator was in a confidential relationship with Ralph Schumacher, proponent of the will. Proponent Kathleen Schumacher was also in a confidential relationship with testator, at least derivatively through her husband and as a result of her close relationship with testator over the four years before his death.

35. The February 23, 2013, will gives petitioners, who are proponents of the will, a substantial benefit from testator's estate.

Discussion

The issue is whether the proposed after-discovered will dated February 23, 2013, is a valid will which should be probated. This court finds that it is not a valid will.

"Under Pennsylvania law, '[a]ny person 18 or more years of age who is of sound mind may make a will.' 20 Pa.C.S.A. §2501. In making a will, an individual may leave his or her property to any person or charity, or for any lawful purpose he or she wishes, unless he or she 'lacked mental capacity, or the will was obtained by forgery or fraud or undue influence, or was the product of a so-called insane delusion.' ... If an individual challenges a will on any of these bases, the burden is on the proponent of the will to present evidence of the formalities of probate. ... Once the proponent presents this evidence, a presumption of validity arises, and the burden shifts to the person contesting the will to prove that the testator lacked mental capacity, or the will was obtained by forgery, fraud, or undue influence, or was the product of an insane delusion." In re Estate of Nalaschi, 90 A.3d 8 (Pa.Super. 2014) (citations omitted).

In our case, it was stipulated that the February 23, 2013, will contained the formalities for probate. The burden shifted to the respondent (executrix) to prove by clear and convincing evidence that the will was the product of undue influence and/or that the testator lacked testamentary capacity at the time of the execution of the will.

In order to establish undue influence, the respondent must prove that (1) The decedent suffered from weakened intellect;

(2) the decedent was in a confidential relationship with the proponent of the will; and (3) the proponent receives a substantial benefit from the will in question. If the respondent can establish each of the three prongs, the burden shifts to the proponent to produce clear and convincing evidence which affirmatively demonstrates the absence of undue influence. In re Estate of Smaling, 80 A.3d. 483, 493 (Pa.Super. 2013) (citing In re Estate of Clark, 334 A.2d 628, 632 (Pa. 1975)).

Each prong of the three part test for undue influence has been established by the respondent and has not been disproven by the petitioners. First, to establish the "weakened intellect", the test does not need to "amount to testamentary incapacity... [I]t is typically accompanied by persistent confusion, forgetfulness, and disorientation." *Id.* At 498 (citing In re Clark, *supra*; In re Estate of Fritts, 906 A.2d 601, 607 (Pa.Super. 2006)). In this case, testator's weakened intellect has been overwhelmingly proven by clear and convincing evidence from many sources. Testator had been a strong-willed man all of his life. However, by February 23, 2013, medical testimony established that testator had been in the throes of progressive dementia for approximately three years, with the symptoms of cognitive impairment, loss of judgment, and loss of memory. When he saw his family doctor in January 2013, his dementia had

progressed to moderate dementia. Moreover, during that examination, testator was malnourished and suffering from delirium as a result of an infection. He was hospitalized for a short period and signed the February 23, 2013, will - within a month of the hospitalization. By April 2013 when the doctor examined him again, the decedent was physically stronger but the symptoms of dementia persisted.

The doctor's diagnosis was verified by testimony of the treatment plant operator who had known and worked with testator regularly for almost thirty (30) years. The treatment plant operator noticed, from at least 2011, testator's increasing inability to maintain the plant. He said that testator's mind seemed to be slipping. The change was dramatic, to the point where the treatment plant operator had to terminate their business relationship in the spring of 2013. The DEP representative who dealt with the treatment plant for many years made similar observations, as did a township supervisor. Testator's weakened intellect was further substantiated by the local chief of police who received numerous out of character bizarre calls from testator throughout 2011 and 2012. The chief also noted that, uncharacteristically, testator allowed a Megan's Law registrant to live with him in 2012, resulting in the theft of testator's guns, jewelry, and coins. After a two month investigation, the thief was arrested February 26, 2013,

three days after the date of the will. The thief and his two relatives were beneficiaries in the will. The evidence is clear and convincing that testator suffered from a weakened intellect at the time he signed the February 23, 2013, will.

Second, the proponents of the will were in a confidential relationship with testator. "A confidential relationship for purposes of undue influence exists 'whenever circumstances make it certain that the parties did not deal on equal terms but that on one side there was an over-mastering influence, and on the other, dependence or trust, justifiably reposed.'" In re Estate of Jakiella, 353 Pa.Super. 581, 510 A.2d 815, 817-818 (1986); see also In re Estate of Clark, 461 Pa. 52, 334 A.2d 628 (1975). The term "influence" does not encompass every line of conduct capable of convincing a self-directing person to dispose of property in one's favor. In re Estate of Ziel, 467 Pa. 531, 359 A.2d 728 (1976). The law requires that the influence be control 'acquired over another that virtually destroys [that person's] free agency.' Id., 467 Pa. at 540, 359 A.2d at 733. Conduct constituting influence must consist of 'imprisonment of the body or mind, fraud, or threats, or misrepresentations, or circumvention, or inordinate flattery or physical or moral coercion, to such a degree as to prejudice the mind of the testator, to destroy his free agency and to operate as a present restraint upon him in the making of

the will.' Id. A parent-child relationship does not establish the existence of a confidential relationship nor does the fact that the proponent has a power of attorney where the decedent wanted the proponent to act as attorney-in-fact. In re Estate of Jakiella, supra." In re Estate of Angle, 777 A.2d 114, 123 (Pa.Super. 2001)

The confidential relationship here is striking. Before the dementia struck, testator and the male petitioner had a strained relationship. After the dementia hit and particularly after male petitioner found that he was not included in the will, the petitioners became much more involved in testator's life. Male petitioner was at testator's house almost every day and slept there several times a week. Male petitioner became a co-owner of testator's bank account. Male petitioner became testator's representative for the treatment plant with DEP and the township, writing letters and attending meetings and being the spokesman for testator. Most significantly, male petitioner (with female petitioner) became testator's legal advisor, going so far as to write a new will and trust and gather the petitioners' friends as witness to the will's signing. Petitioners went far beyond son, daughter-in-law, and helpers to legal representatives, business representatives, confidants, and advisors. Petitioners knew that testator had progressive dementia which resulted in increasingly impaired cognition, loss

of judgment, and loss of memory. They also knew that over a year before February 23, 2013, decedent had refused to change his will, although pressed to do so by petitioners. The evidence is clear and convincing that testator and petitioners were in a confidential relationship at the time testator signed the February 23, 2013, will.

The third prong of the test is undisputed. Petitioners received a substantial benefit from the 2013 will. Thus, the February 23, 2013, will is invalid since it was the product of undue influence.²

² Since this court has found the will invalid as a product of undue influence, an analysis of testamentary capacity is not necessary. However, the court notes that there are three necessary components to determine if a testator has testamentary capacity. "Testamentary capacity exists when a testator is aware of the natural objects of his bounty, the composition of his estate and what he wants done with it, even if his memory is impaired by disease. In re Bosley, 26 A.3d at 1111-12. The testator "need not have the ability to conduct business affairs." Id. at 1112 (citation omitted). Courts evaluate testamentary capacity on the date of the execution of the contested will. Id. at 1112. "Evidence of such state of mind may be received for a reasonable time before and after execution as reflective of decedent's testamentary capacity. This information can be supplied by lay witnesses as well as experts." In re Agostini's Estate, 311 Pa.Super.233, 457 A.2d 861, 867 (1983)." In re Estate of Nalaschi, 90 A.3d 8, 12-13 (Pa.Super. 2014). In this case, two of the components are missing. Testator did not know the natural objects of his bounty. In the February 23, 2013, will, testator bequeathed part of his estate to a man whom he really did not know and two of the man's relatives. This further evidences the fact that he did not know what he wanted to do with his assets in his will.